

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS R. MILLER,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 06-349-GMS
)	
DR. MAGGIE BAILEY, CMS, and)	
FIRST CORRECTIONAL MEDICAL,)	
INC.,)	
)	
Defendants.)	

SUPPLEMENTAL SERVICE ORDER

WHEREAS, the plaintiff filed an amended complaint prior to service of the original complaint (D.I. 17);

WHEREAS, “[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served”, Fed. R. Civ. P. 15(a), and to date the parties have not been served;

WHEREAS, the court has identified cognizable claims within the meaning of 28 U.S.C. § 1915A(b) against the newly added defendant First Correctional Medical, Inc.;

WHEREAS, the plaintiff has also filed motions for appointment of counsel (D.I. 15, 19);

WHEREAS, it is the general practice of this court that motions for appointment of counsel filed prior to service are dismissed without prejudice with leave to refile following service, and to date, service has not been effected upon the defendants;

NOW THEREFORE, IT IS HEREBY ORDERED this 13th day of April, 2007 that:

1. The clerk of the court shall cause a copy of this order to be mailed to the plaintiff.

2. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), the plaintiff shall complete and return to the clerk of the court an **original** "U.S. Marshal-285" form for newly added **defendant First Correctional Medical, Inc.** The plaintiff shall provide the court with one copy of the complaint (D.I. 2), one copy of the memorandum of law in support of the complaint (D.I. 10), and four copies of the amended complaint (D.I. 17) for service upon the defendants. The plaintiff is notified that the United States Marshal will not serve the complaint until the "U.S. Marshal 285" form has been received by the clerk of the court. Failure to provide the "U.S. Marshal 285" form for the newly added defendant within 120 days from the date of this order may result in the complaint being dismissed or the defendant being dismissed pursuant to Federal Rule of Civil Procedure 4(m).

3. Upon receipt of the form(s) required by paragraph 2 above, the United States Marshal shall forthwith serve a copy of the complaint (D.I. 2), the memorandum of law in support of the complaint (D.I. 10), the amended complaint (D.I. 17), this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the remaining defendant(s) identified in the 285 forms.

4. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a defendant, the United States Marshal shall personally serve said defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

5. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the

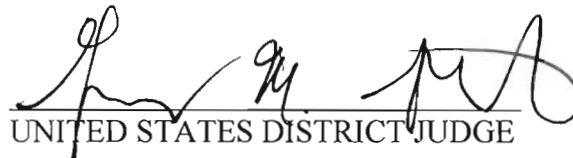
complaint within **sixty (60) days** from the date upon which the complaint, this order, the “Notice of Lawsuit” form, and the “Return of Waiver” form are sent. If a defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

6. This order will supplement the court’s December 14, 2006 service order (D.I. 12).

7. No communication, including pleadings, briefs, statement of position, etc., will be considered by the court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

8. **NOTE: ***** When an amended complaint is filed prior to service, the court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). *******

9. **NOTE: ***** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. *******


UNITED STATES DISTRICT JUDGE

